

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

HOLLY BRANHAM,)
)
Plaintiff,)
)
v.) C.A. No. 6:09cv37-NKM
)
DOLGENCORP, INC., *etc.*,)
)
Defendant.)
)

**DOLGENCORP, INC.'S REPLY TO PLAINTIFF HOLLY BRANHAM'S RESPONSE
TO DOLGENCORP'S MOTION TO DISMISS BRANHAM'S COMPLAINT**

The defendant, Dolgencorp, Inc. ("Dolgencorp"), by counsel, states the following in Reply to plaintiff Holly Branham's ("Branham") Response to Dolgencorp's Motion to Dismiss Branham's Complaint (the "Motion") under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

For the reasons discussed below and in Dolgencorp's Memorandum supporting its Motion, incorporated herein by reference, Dolgencorp respectfully asks the Court to dismiss Branham's Complaint, with prejudice, and to award Dolgencorp all such other and further relief that the Court deems appropriate and just.

**I. THE AUTHORITIES CITED BY BRANHAM IN HER RESPONSE ARE
EITHER SUPERSEDED OR INAPPOSITE**

Branham's terse Response avers that her Complaint "plead[s] factual content that allows the Court to draw reasonable inferences that [Dolgencorp] is liable for the misconduct alleged," acknowledging the new pleading standard adopted by the U.S. Supreme Court in Ashcroft v.

Iqbal, __ U.S. __, 129 S. Ct. 1937, 1949 (2009). (See Resp., at 1.) Without explaining how her Complaint could be interpreted as meeting Ashcroft's plausibility standard, Branham cites a string of decisions from several federal circuit and district courts dating back as far as 1942, apparently (though it is not clear) to illustrate federal pleading requirements. To the extent those early decisions do not apply Ashcroft's plausibility standard, they have now been superseded by Ashcroft, and have no value as precedent. Branham has thus failed to show that her Complaint satisfies Ashcroft's plausibility standard.

Branham also relies on the pleading standard set forth in Rule 3:18(b) of the Rules of the Supreme Court of Virginia, which provides that "[a]n allegation of negligence is sufficient without specifying the particulars of the negligence." Va. S. Ct. R. 3:18(b). State law does not, however, control procedural questions in this Court. See Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 416 (1996), citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). The Court therefore cannot judge the sufficiency of Branham's allegations by whatever standard might apply under Virginia's procedural rules. Branham thus fails to show that her Complaint sufficiently alleges any claims against Dolgencorp for this separate, independent reason as well.

II. CONCLUSION

Branham does not dispute that Ashcroft has set a new, strict pleading standard for pleadings filed in federal court. Her Response fails to show that her Complaint meets that standard, and she appears to rely on authorities that either have been superseded by Ashcroft, or that do not govern in this Court. For these reasons, as well as those discussed in Dolgencorp's Memorandum supporting its Motion, Dolgencorp respectfully prays that Branham's Complaint be dismissed, with prejudice.

DOLGENCORP, INC.

By: MIDKIFF, MUNCIE & ROSS, P.C.

/s/ Kevin T. Streit

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2009, a true and accurate copy of the foregoing was sent by operation of the Court's electronic filing system to the following counsel of record:

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